

MINUTES OF THE CITY COUNCIL

SAN JOSÉ, CALIFORNIA

TUESDAY, AUGUST 5, 2008

The Council of the City of San José convened in regular session at 9:00 a.m. in the Council Chambers at City Hall.

Present: Council Members - Campos, Chirco, Chu, Constant, Cortese, Liccardo, Nguyen, Oliverio, Pyle, Williams; Reed.

Absent: Council Members - None.

Upon motion unanimously adopted, Council recessed at 9:32 a.m. to a Closed Session in Room W133, (A) to confer with Legal Counsel pursuant to Government Code Section 54956.9, subsection (a) with respect to existing litigation: (1) Fong, et al v. City of San José; (2) City of San José v. The Honorable Read Ambler; Sutter's Place, Inc., dba Bay 101, Real Party in Interest; Frederick S. Wyle as Trustee of Garden City, Inc., Real Party in Interest; (3) Sutter's Place, Inc. v. City of San Jose, et al. and Consolidated Actions; (4) Sutter's Place, Inc., dba Bay 101 v. City of San Jose, et al. and Consolidated Actions.; (B) to confer with Legal Counsel – Anticipated Litigation: Anticipated Litigation (Claim Not Filed): Significant exposure to litigation pursuant to subsection (b) of Section 54956.9 of the Government Code: Number of matter(s) to be discussed: 3; (C) to confer with Legal Counsel pursuant to Government Code Section 54956.8: WPCP site, northeast corner of intersection of Highway 237 and Zanker Road; Negotiating Parties: Chief Development Officer Paul Krutko and Ze'ev Drori, Tesla Motors; (D) to confer with Labor Negotiator pursuant to Government Code Section 54957.6: City Negotiator: City Manager Designee Alex Gurza; Employee Organizations: (1) Confidential Employees' Organization, AFSCME, Local 101; (2) Municipal Employees' Federation, AFSCME Local 101, AFL-CIO; (2) City Association of Management Personnel.

By unanimous consent, Council recessed from the Closed Session at 10:32 a.m. and reconvened at 1:33 p.m. in the Council Chambers.

Present: Council Members - Campos, Chirco, Chu, Constant, Cortese, Liccardo, Nguyen, Oliverio, Pyle, Williams; Reed.

Absent: Council Members - None.

Access the video, the agenda and related reports for this meeting by visiting the City's website at <http://www.sanjoseca.gov/clerk/agenda.asp> or <http://www.sanjoseca.gov/clerk/MeetingArchive.asp>. For information on any ordinance that is not hyperlinked to this document, please contact the Office of the City Clerk at (408) 535-1266.

INVOCATION

Bishop Lopez, Church of Jesus Christ of Latter-Day Saints, offered the Invocation.
(District 7)

PLEDGE OF ALLEGIANCE

Mayor Reed led the Pledge of Allegiance.

ORDERS OF THE DAY

Upon motion by Council Member Pyle, seconded by Council Member Campos and carried unanimously, the Orders of the Day and the Amended Agenda were approved, and Items 2.3, 4.1 and 5.2 were deferred to August 12, 2008.

CEREMONIAL ITEMS

1.1 Presentation of a commendation to the Santa Clara County Office of Education for receiving Head Start's "Gold Certificate". (Chu)

Action: Mayor Reed and Council Member Chu recognized and commended the Santa Clara County Office of Education for receiving Head Start's "Gold Certificate".

1.2 Presentation of proclamation declaring Tuesday, August 5, 2008 as "National Night Out" in the City of San José. (Mayor)

Action: Mayor Reed recognized Tuesday, August 5, 2008 as "National Night Out" in the City of San José.

1.3 Presentation of the Government Finance Officers Association's "Certificate of Achievement for Excellence in Financial Reporting" and the "Award of Financial Reporting Achievement" to the San José Redevelopment Agency. (Mayor/Redevelopment Agency)

Action: Mayor Reed presented the Government Finance Officers Association's "Certificate of Achievement for Excellence in Financial Reporting" and the "Award of Financial Reporting Achievement" to the San José Redevelopment Agency.

CONSENT CALENDAR

Upon motion by Council Member Pyle, seconded by Council Member Constant and carried unanimously, the Consent Calendar was approved, and the listed actions were taken as indicated. (11-0.)

2.1 Approval of minutes.

- (a) Regular Minutes of April 22, 2008**
- (b) Joint City Council/Santa Clara Valley Water District Board Study Session Minutes of April 24, 2008**
- (c) 2008-2009 Operating and Capital Budget; 2009-2013 Capital Improvement Program Study Session Minutes of May 7, 2008 through May 16, 2008**

Documents Filed: City Council Minutes of April 22, 2008, Joint City Council/SCVW Board Study Session Minutes of April 24, 2008, and . 2008-2009 Operating and Capital Budget; 2009-2013 Capital Improvement Program Study Session Minutes of May 7, 2008 through May 16, 2008.

Action: The minutes of April 22, April 24 and Study Session Minutes of May 7 through May 16 were approved. (11-0.)

2.2 Final adoption of ordinances.

- (a) ORD. NO. 28351 – Repealing Ordinance No. 27971 and establishing a new, accurate legal description of the expanded public right-of-way on Taylor Street between Anita and Walnut Streets.**

Documents Filed: Proof of Publication of the title of Ordinance No. 28351 executed on June 24, 2008, submitted by the City Clerk.

Action: [Ordinance No. 28351](#) was adopted. (11-0.)

- (b) ORD. NO. 28357 – Establishing a Rule 20A Underground Utility District along White Road, between Rose Avenue and 150 feet north of Alum Rock Avenue.**

Documents Filed: Proof of Publication of the title of Ordinance No. 28357 executed on June 24, 2008, submitted by the City Clerk.

Action: [Ordinance No. 28357](#) was adopted. (11-0.)

2.3 Adoption of a resolution declaring the results of the June 3, 2008 Municipal Election pursuant to Elections Code Section 15400. (City Clerk) (Deferred from 6/24/08 – Item 2.6)

Action: Deferred to August 12, 2008 per Orders of the Day.

2.4 Approval of payment to claimants, Melanie Gill and Robert Day, in the amount of \$75,000, pursuant to a Release, authorized by the City Council in Closed Session on June 17, 2008. (City Attorney's Office)

Documents Filed: Memorandum from City Attorney Doyle recommending approval of payment to claimants.

Action: Payment to claimants, Melanie Gill and Robert Day, in the amount of \$75,000, pursuant to a Release, authorized by the City Council in Closed Session on June 17, 2008, was approved. (11-0.)

2.5 Office of the City Auditor's Report.

Documents Filed: Report of Activities for the Period May 16 through June 15, 2008, submitted by City Auditor Sharon Erikson, dated June 18, 2008.

Action: The Office of the City Auditor's *Report of Activities for the Period May 16, 2008 through June 15, 2008* was accepted. (11-0.)

2.6 Approval of travel for City Manager Debra Figone to Chicago, IL on October 1-3, 2008 for the 2008 San José/Silicon Valley Chamber of Commerce City-to-City Trip. Source of Funds: City Manager's Non Personal Appropriation. (City Manager's Office)

Documents Filed: Memorandum from City Manager Debra Figone, dated July 3, 2008, requesting travel authorization for official City business to Chicago, Illinois.

Action: The request for travel for City Manager Debra Figone was approved.

2.7 Adoption of a resolution:

- (a) **Designating the City's Office of Economic Development, the Planning Division of the Department of Planning, Building and Code Enforcement, consultant Applied Development Economics, and consultant Beacon Economics as representatives of the City, and authorizing them to examine ES202 industry and employment data for the City of San José from the California State Employment Development Department (EDD) for economic development purposes related to the Envision San José 2040 General Plan update; and**
- (b) **Authorizing the City Manager or her designee to negotiate and execute a Memorandum of Understanding (MOU) with the California State Employment Development Department to examine ES202 industry and employment data for the City of San José for economic development purposes related to the Envision San José 2040 General Plan update. Execution of the MOU shall be contingent upon execution of amendments to the consultant agreements with ADE and Beacon to require compliance with the EDD MOU and all its requirements. CEQA: Not a Project.**

2.7 (Cont'd.)

Documents Filed: Memorandum from Chief Development Officer Paul Krutko, dated July 14, 2008, recommending adoption of a resolution.

Action: [Resolution No. 74520](#), entitled “A Resolution of the Council of the City of San José Designating the City’s Office of Economic Development, the Planning Division of the Department of Planning, Building and Code Enforcement, Consultant Applied Development Economics, and Consultant Beacon Economics, LLC as Representatives of the City, Authorize to Examine ES202 Industry and Employment Data for the city from the California State Employment Development Department for Economic Development Purposes Related to the Envision San José 2040 General Plan Update; and Authorizing the City Manager to Negotiate and Execute a Memorandum of Understanding with the California State Employment Development Department”, was adopted. (11-0.)

2.8 **Approval of an agreement with the California Trolley and Railroad Corporation to provide overhead electricity to the tracks and to maintain and operate a section of the Trolley Line located at Kelley Park, known as the Kelley Park Line, for an initial 36 months with the option, conditioned upon mutual agreement, to extend the agreement an additional 24 months. CEQA: Exempt, File No. PP08-131. Council District 7. SNI: Tully/Senter. (Parks, Recreation and Neighborhood Services)**

Documents Filed: Memorandum from Director of Parks, Recreation and Neighborhood Services Albert Balagso, dated July 15, 2008, recommending approval of an agreement with CTRC.

Action: An agreement with the California Trolley and Railroad Corporation to provide overhead electricity to the tracks and to maintain and operate a section of the Trolley Line located at Kelley Park was approved. (11-0.)

- 2.9 (a) **Adoption of a resolution authorizing the City Manager to negotiate and execute a third amendment to the agreement with the Viet Heritage Society for the development, maintenance and operations of the Vietnamese Heritage Garden to:**
- (1) **Increase the City’s contribution toward the project by \$100,000, from \$1,730,000 to \$1,830,000; and**
 - (2) **Amend the agreement to change the completion of Phase I of the improvements within 6 years of execution of the original agreement and completion of Phase II of the improvements by December 31, 2015 and to provide the terms of use of the additional funding.**
- (b) **Adoption of the following Appropriation Ordinance and Funding Sources Resolution amendment in Svcs for Redevelopment Capital Projects Fund (450):**
- (1) **Increase Beginning Fund Balance by \$100,000; and**
 - (2) **Establish an appropriation to the Parks, Recreation and Neighborhood Services Department for the Vietnamese Cultural Heritage Garden (PSM 534) in the amount of \$100,000.**

2.9 (Cont'd.)

- (c) **Adoption of resolutions making certain determinations regarding the related expenditure of Redevelopment Agency funds on certain public improvements in connection with the Vietnamese Heritage Garden project as more specifically described in the memorandum from the Redevelopment Agency, dated January 15, 2008.**

CEQA: Resolution No. 66098, File No. PP04-228. Council District 7. SNI: Tully/Senter. (Parks, Recreation and Neighborhood Services/City Manager's Office)

Documents Filed: Memorandum from Director of Parks, Recreation and Neighborhood Services Albert Balagso and Budget Director Jennifer Maguire, dated July 14, 2008, recommending adoption of an appropriation ordinance and funding sources resolution amendments.

Action: [Resolution No. 74521](#), entitled "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute a Third Amendment to the Agreement with Viet Heritage Society Relating to the Vietnamese Heritage Garden in an additional amount not to exceed \$100,000 and a total amount not to exceed \$1,830,000 and to change the Completion of Phase I of the Improvements within Six Years of Execution of the Original Agreement and Completion of Phase II of the Improvements by December 31, 2015"; [Ordinance No. 28361](#), entitled "An Ordinance of the City of San José Amending Ordinance No. 28349 to Appropriate Monies in the Services for Redevelopment Capital Projects Fund for the Vietnamese Cultural Heritage Garden Project; and Providing that this Ordinance shall become effective immediately upon adoption"; [Resolution No. 74522](#), entitled "Resolution of the Council of the City of San José Amending Resolution No. 74461 setting forth the estimated sources of funds for the Fiscal Year 2008-2009 to adjust Revenues in the Services for Redevelopment Capital Projects Fund"; [Resolution No. 74523](#), entitled "Resolution of the Council of the City of San José making certain determinations regarding the expenditure of Redevelopment Agency Funds for certain Public Improvements in Connection with the Vietnamese Heritage Garden Project in the Tully Senter Neighborhood of the Strong Neighborhoods Initiative Redevelopment Project Area", were adopted. (11-0.) .

- 2.10 (a) Adoption of a resolution approving a purchase agreement with Henry Morado and Ofelia Lopez Morado for the purchase of real property located at 495 Mayellen Avenue, San José, CA (APN No. 277-16-060) for the amount of \$412,000, with an estimated additional amount of \$9,000 for closing and escrow costs, and authorizing the Director of Public Works to execute any additional documents necessary to complete the transaction.**
- (b) Adoption of the following Appropriation Ordinance amendments in the Subdivision Park Trust Fund (Fund 375):**
- (1) Establish an appropriation to the Parks, Recreation and Neighborhood Services Department in the amount of \$421,000 for the Mayellen Avenue Land Acquisition; and**
 - (2) Decrease the Reserve: Future PDO/PIFO Projects by \$421,000.**

CEQA: Exempt, File No. PP08-140. Council District 6. SNI: Burbank/Del Monte.

2.10 (Cont'd.)

Documents Filed: Memorandum from Director of Public Works Katy Allen, Budget Director Jennifer Maguire, and Director of Parks, Recreation and Neighborhood Services Albert Balagso, dated July 14, 2008, recommending adoption of a resolution and appropriation ordinance amendments.

Action: [Resolution No. 74524](#), entitled “A Resolution of the Council of the City of San José Approving an Agreement to Purchase Real Property Located at 495 Mayellen Avenue in the amount of \$412,000.00 for Park Purposes, and Authorizing the Director of Public Works to Execute certain documents to complete the Transaction”; [Ordinance No. 28362](#), entitled “An Ordinance of the City of San José amending Ordinance No. 28349 to appropriate monies in the Subdivision Park Trust Fund for the Mayellen Avenue Land Acquisition; and providing that this Ordinance shall become effective immediately upon adoption”, were adopted (11-0.)

2.11 Request for an excused absence for Councilmember Liccardo from the Regular Meeting of the Community and Economic Development Committee on June 23, 2008 due to a subpoena to testify in a criminal trial on June 23, 2008. (Liccardo) (Rules in-Lieu referral 07/23/08)

Documents Filed: Memorandum from Council Member Liccardo, dated June 23, 2008, requesting an excused absence to testify in a criminal trial.

Action: The absence for Council Member Liccardo was excused. (11-0.)

2.12 Approval of travel by Councilmember Pyle to Dublin, Ireland on July 19, 2008 – July 25, 2008 to foster the important civic and government linkages that have been built during the 22-year San José-Dublin Sister City relationship. The four-day official trip will include meetings with the City of Dublin and Irish National Government, Dublin area businesses and university officials. Source of Funds: Special Fund managed by the Office of Economic Development to travel for Economic Development business. (Pyle) (Rules in-Lieu referral 07/23/08)

Documents Filed: Memorandum from Council Member Pyle, dated July 3, 2008, requesting travel authorization for official City business to Dublin, Ireland.

Action: The request for travel for Council Member Pyle was approved.

END OF CONSENT CALENDAR

STRATEGIC SUPPORT SERVICES

3.1 Report of the City Manager, Debra Figone (Verbal Report)

Action: The City Manager provided an oral update on labor negotiations, the City's fiscal forecast and additional impacts anticipated with adoption of the State Budget.

3.2 Report of the Rules and Open Government Committee – June 11, 2008 Mayor Reed, Chair

Action: Deferred to August 12, 2008.

3.3 Report of the Rules and Open Government Committee – June 18, 2008 Mayor Reed, Chair

Action: Deferred to August 12, 2008.

3.4 Report of the Public Safety, Finance and Strategic Support Committee – June 19, 2008 Councilmember Nguyen, Chair

Action: Deferred to August 19, 2008 per Administration

3.7 (a) Council discussion and consideration of various ballot measures for the November 4, 2008 election, and adoption of resolutions of the City Council calling and giving notice of, on its own motion, Special Municipal Elections to be held on November 4, 2008, to submit to the electors of the City of San José the following measures:

Documents Filed: (1) Memorandum from Mayor Reed, dated August 1, 2008, recommending adoption of ballot measures. (2) Memorandum from City Attorney Doyle, dated August 1, 2008, submitting possible reconsideration of certain ballot items by Council Member Constant and Council Member Oliverio. (3) Memorandum from City Manager Debra Figone, dated July 22, 2008, recommending proposed ballot measures for the November 4, 2008 election. (4) Memorandum from City Manager Debra Figone, dated July 25, 2008, recommending additional proposed ballot measures. (5) Supplemental memorandum from City Manager Debra Figone, dated July 31, 2008, submitting the report "City of San José 2008 Ballot Measure Refinement Survey – Report of Survey Results" prepared by Fairbank, Maslin, Maulin & Associates.

City Manager Debra Figone and Assistant City Manager Christine Shippey provided an overview of the proposed ballot measures.

David Metz of Fairbank, Maslin, Maulin & Associates presented results of the survey taken of San José voters regarding proposed ballot measures. Assistant City Manager Christine Shippey offered Staff recommendations based on polling results.

3.7 (Cont'd.)

Mayor Reed announced additional information had become available relative to the card room initiative (Item 3) and recommended the City Council reconsider its previous action. He added that the Council would also need to waive the 10-day noticing rule, which requires a 2/3 vote.

Action: On a motion made by Vice Mayor Cortese, seconded by Council Member Pyle, the City Council unanimously waived the 10-day Sunshine notice requirements to reconsider two actions taken by the City Council at its Special Meeting on June 19, 2008.

(1) A measure entitled “Reduction of Tax Rate and Updating of Telecommunications Users Tax” to reduce the tax from 5% to 4.75%.

Motion: Council Member Constant moved approval of the ballot measure with alternate ballot language per City Manager Debra Figone’s memorandum of July 25, 2008. Vice Mayor Cortese seconded the motion. (11-0.)

Public Comment: Jody Hanson (San José/Silicon Valley Chamber of Commerce) expressed concerns about the undue burden on business owners with multiple lines and suggested a “cap”. Pat Dando (San José/Silicon Valley Chamber of Commerce) urged the Council to balance out the package and continue outreach to the business community. Mark Breller (Adobe Systems) concurred.

Action: Upon motion by Council Member Constant, seconded by Vice Mayor Cortese and carried unanimously, [Resolution No. 74527](#), entitled “A Resolution of the Council of the City of San José Calling and Giving Notice of, on its own Motion, the Submission to the Electors of the City of San José, at the Special Municipal Election to be Held on November 4, 2008, a Ballot Measure to Reduce the Tax Rate and Update the City’s Telecommunications Users Tax” was adopted, as amended; changing “modernize” to “update” and “...tax from 5% to 4.5%”. Staff was directed to continue working with large business partners to determine if the proposed telephone users tax creates disproportionate financial impacts and, if so, provide a mitigation plan to the Council if the ballot measure is approved. (11-0.)

(2) A measure entitled “Reduction and Replacement of 9-1-1 Fee” to replace the existing fee of \$1.75 per single line and \$13.13 on trunk lines, with a reduced tax of \$1.65 and \$12.38, respectively.

Public Comment: Jody Hansen (San José/Silicon Valley Chamber of Commerce) expressed concern over disproportionate costs to San José businesses and recommended one cap per business located in San José.

3.7 (Cont'd.)

Motion: Council Member Liccardo moved approval of Mayor Reed's recommendation, amending ballot language as recommended by Staff that lifeline exemptions for low-income households be "subject to existing audits". Council Member Nguyen seconded the motion.

Action: On call for the question, the motion carried, [Resolution No. 74528](#), entitled "Resolution of the Council of the City of San José Calling and Giving Notice of, on its own Motion, the Submission to the Electors of the City of San José, at the Special Municipal Election to be Held on November 4, 2008, a Ballot Measure Proposal to Eliminate the City's Emergency Communications System Support Fee and Replace it with a Reduced Telephone Line Tax", was adopted as amended, with Staff directed to continue outreach to taxpayers who may be disproportionately impacted; and, if so, provide a mitigation plan to the Council if the ballot measure is approved. (9-2-0). Noes: Constant, Cortese.)

- (3) **A measure entitled "The San José Vital City Services Preservation Measure" to increase the existing business tax on card room revenues from 13% to 18% and clarify the definition of gross revenues.**

Documents Filed: (1) Memorandum from City Attorney Doyle, dated July 29, 2008, submitting the proposed ballot measure regarding business tax on card room revenues. (2) Memorandum from Council Member Campos, dated August 4, 2008, recommending that the City Council not place ballot measure before voters that will increase Card Room Tax. (3) Memorandum from Council Member Chu, dated August 4, 2008, recommending that City Council vote to increase Card Room Tax. (4) Replacement memorandum from Pete Constant, Chairman, 3-Year General Fund Structural Deficit Elimination Plan Stakeholder Group, dated July 29, 2008, recommending placing measure on ballot to increase Card Room Tax rate only if number of card room tables permitted is increased. (5) Letter from Michele Lew, President and CEO of Asian Americans for Community Involvement, dated August 5, 2008, requesting designation of portion of revenue raised for community services for problem gamblers.

The motion to reconsider was made by Council Member Williams and seconded by Council Member Pyle.

Action: Motion to reconsider an increase in the number of card room tables was made by Council Member Williams, seconded by Council Member Pyle and was passed 9:2. (Noes: Campos, Chu.)

3.7 (Cont'd.)

Public Comment: Bob Brownstein, Pat Dando, Jan Schneider, Steve Moore, and Ed Rast (3-Year General Fund Structural Deficit Elimination Plan Stakeholder Group) spoke in support of the card room tax rate increase with an increase in the number of card room tables. Michelle Lew (Asian Americans for Community Involvement) expressed the need for increased community services for problem gamblers. Bobby Lopez (San José Police Officers' Association) expressed public safety concerns. Elizabeth Brierly spoke in favor of card room table increase and decrease in the tax rates.

Motion: Council Member Constant moved to accept Mayor Reed's proposed 2.5% tax increase on gaming revenue with an allowance of up to an additional nine tables at each club. Council Member Oliverio seconded the motion.

Substitute Motion: Council Member Campos moved that the ballot issue not be placed before voters at the November 4, 2008 General Election. The motion was seconded by Council Member Liccardo. Individual Council comments followed.

Action: On a call for the question, the substitute motion carried; the City Council took no action to place on the ballot the measure entitled, "The San José Vital City Services Preservation Measure". (8-3-0. Noes: Reed, Constant, Oliverio.)

- (4) **A measure entitled "Long Term Agreements in Certain City Parks" to amend the City Charter to permit the Council, without voter approval, to enter into agreements of up to 30 years, from the existing 3 years, that impact parks over 5 acres, if the agreements enhance the recreational purposes of the park.**

Documents Filed: Memorandum from Council Member Liccardo, dated August 1, 2008, regarding revision of measure language for Parks Charter Amendment.

Motion: Council Member Williams moved approval of the Staff recommendation, as amended to allow for agreements with non-city entities for up to 25 years. The motion was seconded by Council Member Pyle.

Council Member Liccardo offered a friendly amendment to the motion changing the maximum number of years to twenty (20). The amendment to the motion was not accepted.

Action: On a call for the question, the motion carried unanimously, [Resolution No. 74530](#) entitled "A Resolution of the Council of the City of San José Calling and Giving Notice of, on its own Motion, the Submission to the Electors of the City of San José, at the Special Municipal Election to be Held on November 4, 2008, a Ballot Measure Proposal to Amend the City Charter to Permit the Council, without Voter Approval, to Enter into Agreements of up to 25 Years from the Existing 3 Years, that Impact Parks over 5 Acres, if the Agreements Enhance the Recreational Purposes of the Park", was adopted. (11-0.)

3.7 (Cont'd.)

- (5) **A measure entitled “Council Compensation” to amend the City Charter to set Mayor and City Council salaries to 80% and 60%, respectively, of the salary established for a California Superior Court Judge.**

Public Comment: Elizabeth Brierly spoke in support of the measure only if a change was made setting judges’ salaries to match or be lower than Council Members’ salaries.

Action: Upon motion by Council Member Liccardo, seconded by Vice Mayor Cortese and carried unanimously, the “Council Compensation” measure was taken from the Ballot. (11-0.)

- (b) **Council discussion and consideration of the inclusion of ordinance language in voter pamphlets. CEQA: Not a Project. (City Manager’s Office) (*see page 13*)**

- (c) **Possible reconsideration of actions taken on June 19, 2008 on the following matters:**

- (1) **Waive the 10-day Sunshine Notice Requirements to reconsider two actions taken by the City Council at a Special Meeting on June 19, 2008.**

Action: See page 13.

- (2) **Consider placing a measure on the November 2008 ballot that would increase the card room business tax rate only if the number of card room tables permitted was also increased. (Constant)**

Action: See page 13.

- (3) **Reconsider placing the Parkland/Proposed Fire House 37 on the November 4, 2008 ballot. (Oliverio)**

Documents Filed: (1) Memorandum from Council Member Oliverio, dated July 30, 2008, recommending that the City Council reconsider it’s prior vote allowing measure to be placed on the ballot. (2) Petition and extensive email campaign urging that Fire House 6 remain open. (3) Letters from the Burbank/Del Monte Neighborhood Advisory Committee, the Sherman Oaks Neighborhood Association, the Greater Gardner Coalition NAC, the North Willow Glen Neighborhood Association, the Willow Glen Neighborhood Association, the Willow Glen Business Association, and Helen Chapman of the Shasta Hanchett Neighborhood Association, urging the Council to not place the parkland/Proposed Firehouse 37 on the ballot.

Motion: A motion to reconsider this item as outlined in Council Member Oliverio’s memorandum of July 30, 2008, was made by Council Member Campos and seconded by Council Member Williams.

3.7 (Cont'd.)

Council Member Oliverio provided arguments in opposition to closing and selling Fire Station #6. He indicated support for a new fire station at a more strategic location like the old church site on Almaden and Foxworthy in District 39.

Motion: Council Member Oliverio moved to repeal Resolution No. 74459 and not place the measure on the ballot. The motion was seconded by Vice Mayor Cortese.

Extensive Council discussion ensued.

Fire Chief Darryl Von Raesfeld responded to questions from Council regarding service area issues.

Public Comment: Expressing concerns over the effects of closing Fire Station #6 and placing the Parkland/Proposed Firehouse 37 on the ballot were: Robin Marino, John Tweten, Marie Tortio, Lee Hayward, Ronald Haulman, Gary Nelson (Willow Glen Business Association), Deborah Arant (SHPNA), Randi Kinman, Richard Zappelli (WGNA), Ed Rast and Jean Dresden.

Action: On a call for the question, the action failed, and no action was taken to repeal Resolution No. 74459. (5-6-0. Noes: Chirco, Liccardo, Nguyen, Pyle, Reed, Williams.)

Action: Council Member Oliverio moved that Staff return to Council with revisions to the CIP that confirm no decision has been made regarding the sale of Fire Station #6 and that the sale is not needed to complete Fire Station #37, consistent with the June 2008 Mayor's Budget Message. Council Member Chirco seconded the motion. The motion carried. (10-1-0. Noes: Cortese.)

(b) **Council discussion and consideration of the inclusion of ordinance language in voter pamphlets. CEQA: Not a Project. (City Manager's Office)**

Action: Upon motion by Council Member Pyle, seconded by Council Member Constant and carried unanimously, the motion was passed, with the City Clerk directed to post the text of the initiatives on the City's website, and make copies available in public libraries and community centers, in lieu of publishing the full text in the Voters' Sample Ballot. (9-0-2. Absent: Campos, Liccardo.)

3.5 Adoption of a resolution approving the terms of a Memorandum of Agreement with the Municipal Employees' Federation (MEF) AFSCME Local No. 101, AFL-CIO, and authorizing the City Manager to execute the agreement with a term of July 1, 2008 to June 30, 2011. CEQA: Not a Project. (City Manager's Office)

Documents Filed: Memorandum from Director of Employee Relations Alex Gurza, dated July 15, 2008, recommending adoption of a resolution.

Public Comment: Linda Dittes (AFSCME Local No. 101) expressed appreciation to Employee Relations for their timely contract negotiation.

Action: Upon motion by Council Member Pyle, seconded by Council Member Oliverio and carried unanimously, [Resolution No. 74525](#), entitled "A Resolution of the Council of the City of San José Approving an Agreement between the City of San José and the Municipal Employees' Federation, (MEF) AFSCME Local No. 101, AFL-CIO with a Term of July 1, 2008 to June 30, 2011", was adopted. (11-0.)

3.6 Adoption of a resolution approving the terms of an agreement with the City Association of Management Personnel (CAMP), and authorizing the City Manager to execute the agreement with a term of July 1, 2008 to June 30, 2010. CEQA: Not a Project. (City Manager's Office)

Documents Filed: Memorandum from Director of Employee Relations Alex Gurza, dated July 15, 2008, recommending adoption of a resolution approving the terms of the Agreement.

Public Comment: Gay Gale (CAMP) suggested that alternative strategies for non-economic measures be considered in future negotiations.

Action: Upon motion by Council Member Pyle, seconded by Council Member Oliverio and carried unanimously, [Resolution No. 74526](#), entitled "A Resolution of the Council of the City of San José Approving an Agreement between the City of San José and the Municipal Employees' Federation, (MEF) AFSCME Local No. 101, AFL-CIO with a Term of July 1, 2008 to June 30, 2011", was adopted. (11-0.)

3.8 Adoption of a resolution establishing the FY 2008-09 property tax levy on all taxable property for general obligation bonded indebtedness. CEQA: Not a Project. (Finance)

Documents Filed: Memorandum from Director of Finance Scott P. Johnson, dated July 14, 2008, recommending adoption of a resolution.

Action: Upon motion by Council Member Pyle, seconded by Council Member Liccardo and carried unanimously [Resolution No. 74531](#), entitled "A Resolution of the Council of the City of San José Establishing the Fiscal Year 2008-2009 Property Tax Levy for the City's General Obligation Bond Indebtedness", was adopted. (9-0-2. Absent: Constant, Oliverio.)

3.9 Conduct a public hearing on the Sewer Service and Use Charges and Storm Sewer Service Charges report filed by the Director of Finance with the City Clerk's Office and adoption of a resolution approving the placement of recommended charges on the 2008-2009 tax roll, with such modifications as Council may make based on public hearing testimony. CEQA: Not a Project. (Finance)

Documents Filed: (1) Memorandum from Director of Finance Scott P. Johnson, dated July 14, 2008, recommending a public hearing be held on the placement of sewer service and use charges. 2) Proof of Publication of Notice of Public Hearing, executed on July 18, 2008, submitted by the City Clerk.

Public Comment: Mayor Reed opened the public hearing. William Garbett spoke in opposition to park land offsets. Mayor Reed closed the public hearing.

Action: Upon motion by Council Member Pyle, seconded by Council Member Liccardo and carried unanimously [Resolution No. 74532](#), entitled "A Resolution of the Council of the City of San José Approving the Annual Report for Fiscal Year 2008-2009 of the director of Finance on Sanitary Sewer Service and Use Charges and Storm Sewer Service Charges and approving the Placement of Charges as set forth therein on the 2008-2009 Tax Roll", was adopted. (9-0-2. Absent: Constant, Oliverio.)

3.10 Approval of the following actions regarding Bellarmine College Preparatory, located at 960 West Hedding Street, San José, CA 95126:

- (a) **Conduct a Tax Equity and Fiscal Responsibility Act (TEFRA) Hearing for the issuance of \$2,000,000 of tax-exempt 501(c)(3) revenue bonds by the California Statewide Community Development Authority (CSCDA).**
- (b) **Adopt a resolution approving the issuance of Tax-Exempt Obligations by the CSCDA in an aggregate principal amount not-to-exceed \$2,000,000 ("the "Bonds") to be used to (a) finance or refinance the acquisition, construction, rehabilitation and improvement of property, including real and personal property, and including energy efficiency upgrades at Bellarmine's existing school campus and (b) pay related expenses.**

CEQA: Mitigated Negative Declaration, File No. PDC07-072. (Finance)

Documents Filed: (1) Memorandum from Director of Finance Scott P. Johnson, dated July 14, 2008, recommending conduit financing for Bellarmine College Preparatory. (2) Memorandum from Debt Administrator, Finance, David Persselin, dated July 18, 2008, submitting the loan agreement for Bellarmine College Preparatory.

Motion: Upon motion by Council Member Pyle, seconded by Council Member Campos and carried unanimously, [Resolution No. 74533](#), entitled "A Resolution of the Council of the City of San José Approving a Revenue Bond Financing to be Issued by the California Statewide Communities Development Authority to Benefit Bellarmine College Preparatory", was adopted. (8-0-3. Absent: Chirco, Constant, Oliverio.)

COMMUNITY & ECONOMIC DEVELOPMENT

4.1 Report of the Community & Economic Development Committee – June 23, 2008 Councilmember Pyle, Chair

Action: Deferred to August 12, 2008.

- 4.2 (a) Approval of an ordinance amending Chapter 5.06 of Title 5 of the San José Municipal Code – “Contract Authority of the Director of Housing, City Manager and Director of Finance” – to modify the Director of Housing’s delegated authority by: eliminating the maximum amount of predevelopment loans that can be made to nonprofit housing developers by the Director; and authorizing the Director to make commitments of project-based second mortgages.**
- (b) Adoption of a resolution to increase the maximum amount of predevelopment loans that can be approved by the Director of Housing from \$100,000 to \$500,000; and set a \$500,000 limit on the amount of project-based second mortgages that can be committed by the Director of Housing to any one for-sale development.**

CEQA: Not a Project. (Housing)

(Deferred from 5/20/08 – Item 4.3 and 6/3/08 – Item 4.4)

Action: Deferred to August 26, 2008

- 4.3 Accept the staff report updating the Committee on the transition plan for Mexican Heritage Plaza. CEQA: Not a Project. (General Services/Economic Development)
[Community and Economic Development Committee referral 06/23/08 – Item (h)]**

Action: Deferred to August 19, 2008

- 4.4 (a) Approving a funding commitment of up to \$1,800,000 in Federal HOME Funds for Bill Wilson Center, or its designee, for the rehabilitation of The Commons, a 28-unit affordable rental housing project targeted to San José and Santa Clara youth aging out of foster care or otherwise at risk of homelessness located at 3661 Peacock Court in the City of Santa Clara, to be made available to extremely low-income, very low-income and low-income households; and**
- (b) Approving a 224% loan-to-value ratio as an exception to City policy that the loan-to-value ratio in affordable housing projects should not exceed 100%.**

CEQA: Exempt. (Housing)

NEPA: (National Environmental Policy Act): Finding of No Significant Impact (FONSI).

Documents Filed: Memorandum from Director of Housing Leslye Krutko, dated July 14, 2008, recommending adoption of a resolution.

4.4 (Cont'd.)

Action: Upon motion by Council Member Williams, seconded by Council Member Chirco and carried unanimously, [Resolution No. 74534](#), entitled “A Resolution of the Council of the City of San José Approving a Funding Commitment of Federal Home Funds for the Bill Wilson Center for the Rehabilitation of the Commons Affordable Rental Housing Project, and Approving a Loan-to-Value Ratio in Excess of 100%”, was adopted. (10-0-1. Absent: Oliverio.)

NEIGHBORHOOD SERVICES

- 5.2 (a) Conduct a hearing to determine whether the low bid submitted by Zolman Construction & Development, Inc. for the Bascom Library and Community Center Project should be rejected on the ground that Zolman was not qualified to submit a bid.**
- (b) Award the construction contract for the project to the low bidder, John Plane Construction, Inc., to include the base bid and add alternative Nos. 1 and 3, in the amount of \$17,974,000 and approve a contingency in the amount of \$1,797,000.**

CEQA: Exempt, File No. PP07-081. Council District 6. SNI: Burbank/Del Monte. (Parks, Recreation and Neighborhood Services/Library/Public Works)
(Deferred from 6/10/08 – Item 5.3 and et. al. 6/24/08 – Item 5.4)

Action: Deferred to August 19, 2008.

TRANSPORTATION & AVIATION SERVICES

- 6.2 Acceptance of a presentation by the City of San José Director of Aviation regarding the current status of the airline industry. CEQA: Not a Project. (Airport)**

Action: Deferred to August 19, 2008.

- 6.3 (a) Adopt a resolution:**
- (1) Increasing the Taxicab Rates, Fares and Tariffs for the operations of taxicabs in the City of San José outside the Airport contained in Resolution No. 73886 as follows:**
 - (a) Flag drop rate to \$3.50 for the first 1/10th of a mile.**
 - (b) Per mile rate to \$3.00 (\$0.30 per 1/10th mile after the first 1/10th mile).**
 - (c) Wait time rate to \$30 per hour (\$0.50 per minute).**
 - (d) Implement a fuel surcharge in \$0.50 increments up to a maximum of \$2.00 that corresponds to the average price of gasoline reaching \$4.50, \$5.00, \$5.50 and \$6.00 in San José.**
 - (e) Implement a \$1.50 Airport trip fee for trips to Mineta San José International Airport.**
 - (2) Readopting all the other Rates, Fares and Tariffs in Resolution No. 73886 not revised above.**
 - (3) Repealing Resolution No. 73886.**
- (b) Adopt a resolution:**
- (1) Increasing the Taxicab Rates, Fares and Tariffs for the operation of taxicabs in the City of San José at the Airport contained in Resolution No. 73885 as follows:**
 - (a) Flag drop rate to \$3.50 for the first 1/10th of a mile.**
 - (b) Per mile rate to \$3.00 (\$0.30 per 1/10th mile after the first 1/10th mile).**
 - (c) Wait time rate to \$30 per hour (\$0.50 per minute).**
 - (d) Implement a fuel surcharge in \$0.50 increments up to a maximum of \$2.00 that corresponds to the average price of gasoline reaching \$4.50, \$5.00, \$5.50 and \$6.00 in San José.**
 - (e) Implement a \$1.50 Airport trip fee for trips to Mineta San José International Airport.**
 - (f) Make appropriate changes to the definitions of Taxicab Trip and Trip.**
 - (2) Readopting all the other Rates, Fares and Tariffs in Resolution No. 73885 not revised above.**
 - (3) Repealing Resolution No. 73885.**

CEQA: Not a Project. (Transportation/Airport)

6.3 (Cont'd.)

Documents Filed: (1) Joint memorandum from Council Members Constant, Campos and Pyle, dated August 4, 2008, recommending acceptance of Staff recommendations with amendments as noted. (2) Memorandum from Director of Transportation, James R. Helmer, and Director of Aviation William F. Sherry, dated July 14, 2008, recommending adoption of resolutions relating to taxicab rate of fare adjustments. (3) Supplemental Memorandum from Director of Transportation, James R. Helmer, and Director of Aviation William F. Sherry, dated July 30, 2008, providing additional recommendations for Council consideration. (4) Supplemental Memorandum from Director of Transportation, James R. Helmer, and Director of Aviation William F. Sherry, dated August 5, 2008, requesting clarification on the memorandum from Council Members, dated August 4, 2008. (5) Letter from Larry Silva, President, Yellow Checker Cab Company, dated July 28, 2008, stating objections and recommendations. (6) Letter from Gary Lind, Holiday Inn, San José, dated July 29, 2008, urging Council's support for increased taxicab rate fare adjustment. (7) Letter from Rob Balmer, Doubletree Hotel, San José, dated July 31, 2008, urging Council's support for increased taxicab rate fare adjustment. (8) Letter from Gary Hagerman, Wyndham, Hotel, San José, dated July 30, 2008, urging Council's support for increased taxicab rate fare adjustment. (9) Email from Therese Maloney, Owner, United Cab Company, dated August 5, 2008, supporting Staffs' recommendations.

Director of Transportation, James R. Helmer, Assistant Director of Transportation Jim Ortbal and Director of Aviation William F. Sherry provided a presentation on taxicab rate of fare adjustments.

Public Comment: Speaking in support of the Staff recommendation as amended by the joint Council memorandum dated August 4, 2008, were Dave Logan (Yellow Checker Cab Company), Seyoum Asrat, Jaswant Dhillon (Green Cab Company), Iqbal Durrant, Tony Alexander, Mary Creasman (South Bay Labor Council) and Dan Fenton (Taxi San José). William Garbett spoke in opposition.

Council discussion followed. Significant debate ensued regarding alternatives and how long staff needs to develop options and conduct outreach. Staff requested 90 days to compile the work. Vice Mayor Cortese proposed 75 days. Council Member Williams suggested 60 days. Council agreed upon 75 days.

6.3 (Cont'd.)

Action: Upon motion by Council Member Constant, seconded by Council Member Campos and carried, [Resolution No. 74535](#), entitled “A Resolution of the Council of the City of San José Fixing and Determining Rates, Fares, and Tariffs for the Operation of Taxicabs in the City of San José Outside the Airport Pursuant to Municipal Code Chapter 6.65, and Repealing Resolution No. 73886”, and [Resolution No. 74536](#), entitled “A Resolution of the Council of the City of San José Establishing Fees, Rates and Charges at the Norman Y. Mineta San José International airport and Repealing Resolution No. 73885”, were adopted, as amended: Modify Item (d) – delete “maximum of \$2.00”; delay implementation of Item; and (e), \$1.50 Airport trip fee until the same fee can be implemented for other forms of commercial ground transportation to the Airport. Staff was directed to return within 75 days with recommendation/s to implement an Airport minimum fare, a flat fare and/or other operational solutions for short distances and to develop an ordinance that eliminates the requirements for taxicab rates to be set by City Council resolution after a public hearing. (10-1-0. Noes: Williams.)

- NOTICE OF CITY ENGINEER’S PENDING DECISION ON FINAL MAPS**

In accordance with Sec. 19.16.140d of the San José Municipal Code, this is notice of the City Engineer's pending decision on the following Final Maps:

| <u>Tract</u> | <u>Location</u> | <u>Council District</u> | <u>Developer</u> | <u>Lots/Units</u> | <u>Type</u> | <u>Proposed Decision</u> |
|--------------|---------------------------------------------------|-------------------------|-----------------------------------|----------------------|-------------|--------------------------|
| 9917 | W/S of San Felipe Rd, 300’ S of Yerba Buena Rd | 8 | Blossom Valley Investors, Inc. | 32 Lots/ 25 units | SFD | Approve |

In accordance with Sec. 19.16.140d of the San José Municipal Code, this is notice of the City Engineer's receipt of the following Final Maps for review:

| <u>Tract</u> | <u>Location</u> | <u>Council District</u> | <u>Developer</u> | <u>Lots/Units</u> | <u>Type</u> |
|--------------|-----------------------------------------------|-------------------------|------------------------------|-------------------|-------------|
| 9999 | NW corner of Curtner Ave and Monterey Rd | 7 | WPV San José LLC | 6 lots/6 units | Retail |
| 10009 | E/S of Almaden Rd, 400’ S of McKean Rd | 10 | Almaden Project LLC | 6 lots/6 units | SFD |
| 10010 | SE corner of Zanker Rd and River Oaks Parkway | 4 | Irvine Apartment Communities | 6 lots/1900 units | MFA/Retail |

OPEN FORUM

Mark Trout expressed religious viewpoints.

ADJOURNMENT

The Council of the City of San José was adjourned at 7:07 p.m. in memory of David Powers, founder of David J. Powers & Associates, Inc., who passed away July 13, 2008, and is honored for his legacy and contributions to environmental review and public policy over the past 35 years. (Mayor)

Minutes Recorded, Prepared and Respectfully Submitted by,

Lee Price, MMC
City Clerk

rmk/8/05/08MIN

JOINT REDEVELOPMENT AGENCY ITEM

The Joint Redevelopment Agency Board convened at 1:47 p.m. to consider Item 8.1 in a Joint Session.

- 8.1 (a) Adoption of a resolution by the Redevelopment Agency Board approving a plan setting aside Agency funds for the specific purpose of land acquisition and development costs of joint school and park facilities as needed to support student generation resulting from the proposed future residential development in North San Jose, consistent with the adopted North San Jose Vision 2030 Area Development Policy as follows:**
- (1) Appropriate \$15 million from funds set aside for North San Jose infrastructure improvements in the FY 2008-09 Redevelopment CIP Budget for a joint school/park use on Agnews Development Center's East Campus lands located on Zanker Road; and,**
 - (2) In FY 2011-12, contingent on the Agency's ability to issue future debt, appropriate an additional amount up to \$30 million for the acquisition of land and construction of joint school/park facilities, in North San Jose in the location identified above; and,**
 - (3) Prior to issuance by the City of any residential building permits under Phase 2 of the adopted North San Jose Vision 2030 Area Development Policy, and contingent on the Agency's ability to issue future debt, appropriate funding to acquire land for a second joint school/City park site in the amount of \$50,000 per student generated out of Phase 1 of the adopted North San Jose Vision 2030 Area Development Policy in excess of existing capacity, in a total amount not to exceed \$30 million.**
- (b) Adoption of resolutions by the Redevelopment Agency Board approving an adjustment to the FY 2008-09 Adopted Capital Budget by shifting \$7,500,000 from the FY 2008-12 Adopted Capital Improvement Program/Budget (FY 2009-10 Rincon-Vision North San Jose project line) to the FY 2008-09 Rincon-Park and Infrastructure Improvement project line in the Rincon de Los Esteros Redevelopment Area, and amending the FY 2008-2009 Agency appropriations resolution.**

8.1 (c) Direction to the City Manager and Redevelopment Agency Executive Director to:

- (1) Negotiate the terms of an Agreement with the Santa Clara Unified School District, for City Council/Agency Board consideration within 90-days of this action being approved, related to the appropriation of Agency funds towards land and development costs associated with the plan described above; and,**
- (2) Initiate discussions with the State of California and any other private and public parties/agencies necessary to declare the Agency's and City's interest in pursuing the acquisition of a 15-acre portion of the Agnews Development Center's East Campus site on Zanker Road for joint school/park purposes.**

[RINCON DE LOS ESTEROS]

Documents Filed: (1) Memorandum from Mayor Reed, dated August 4, 2008, recommending approval of the plan as outlined in July 18, 2008 memorandum, with amendments as noted. (2) Memorandum from Executive Director of the Redevelopment Agency Harry S. Mavrogenes, dated July 22, 2008, providing an analysis of economic impacts of proposed agreement. (3) Letter from Ken Rile, President, Orchard School District Board, dated July 31, 2008, to the Santa Clara Unified School District Board, requesting collaborative development.

Mayor Reed, Vice Mayor Cortese and Council Members Liccardo, Chu, Nguyen and Williams made disclosures.

Action: Upon motion by Council Member Chu, seconded by Council Member Liccardo and carried unanimously, [Resolution No. 74559](#), entitled "A Resolution of the Council of the City of San José Directing the City Manager to Negotiate with Santa Clara Unified School District and the State of California Relating to Acquisition of Land in North San José for Joint School/Park Purposes", and [Redevelopment Agency Resolution Nos. 5853 and 5854](#) were adopted, with direction to the City Manager and Redevelopment Agency Executive Director to negotiate the terms of an agreement with the Santa Clara Unified School District for City Council/Agency Board consideration within 90 days. (11-0.)

Access the video, the agenda and related reports for this meeting by visiting the City's website at <http://www.sanjoseca.gov/clerk/agenda.asp> or <http://www.sanjoseca.gov/clerk/MeetingArchive.asp>. For information on any ordinance that is not hyperlinked to this document, please contact the Office of the City Clerk at (408) 535-1266.